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MAILED

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OFFICE OF PETITIONS

In re Application of :
Gaue et al. :
Application No. 10/764,056 :
Filed: January 23, 2004 :
Attorney Dkt. No. MAIWAM6.001C1: :

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 8, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This above-identified application became abandoned for failure to timely file a reply to a final Office action mailed March 13, 2006. The Office Action set a three (3) month shortened statutory period for reply. An untimely three month extension of time was requested under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on June 14, 2006. A Notice of Abandonment was mailed on October 17, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1110.00 extension of time fee submitted with the petition on September 11, 2009 was subsequent to the maximum extendable period for reply. The fee will be refunded.

It should be very carefully noted that neither the primary examiner nor the Director of the USPTO has authority to extend the shortened statutory period unless a petition for the extension is filed. While the shortened period may be extended within the limits of the statutory 6 months period, no extension can operate to extend the time beyond the 6 months. Further, Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. *See Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 11/520,186.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3215.

A handwritten signature in black ink, appearing to read "Charlema Grant", with a long, sweeping horizontal line extending to the right.

Charlema Grant
Petitions Attorney
Office of Petitions